



1-1-1991

Criminal Procedure

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Criminal Procedure*, 22 PAC. L. J. 506 (1991).

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Criminal Procedure

Criminal Procedure; assisting peace officers

Penal Code § 150 (amended).

AB 2692 (O'Connell); 1990 STAT. Ch. 273

Support: California Peace Officers' Association, California Association of Highway Patrolmen.

Under existing law, it is unlawful for an able-bodied person above eighteen years of age to neglect or refuse to assist in the taking or arrest¹ of any person when lawfully required to do so by a uniformed peace officer.² Chapter 273 makes it unlawful for an able-bodied person over the age of eighteen to neglect or refuse to assist any peace officers³ who identify themselves with a badge or identification card issued by their employing agency.⁴

LSP

1. See CAL. PENAL CODE §§ 834-835 (West 1985) (definition and procedure of arrest).

2. *Id.* § 150 (amended by Chapter 273). Violation of this provision is punishable by a fine of not less than \$50 nor more than \$1,000. *Id.* See *Freeman v. Dep't. of Motor Vehicles*, 70 Cal. 2d 235, 238, 449 P.2d 195, 198, 74 Cal. Rptr. 259, 262 (1969) (peace officer may orally summon as many persons as deemed necessary to aid in making an arrest). See CAL. PENAL CODE §§ 830-830.6 (West Supp. 1990) ("peace officers" include sheriffs, police, marshals, constables, inspectors and investigators of district attorneys, members of the California Highway Patrol and the California National Guard, and state university and college police).

3. See CAL. PENAL CODE § 150 (amended by Chapter 273) (expanding existing law to include peace officers employed by city, county or state law enforcement agencies). See also *id.* §§ 830.1, 830.2(a), (b), (d)-(f) (West Supp. 1990) (definition of peace officers covered by Chapter 273).

4. *Id.* § 150 (amended by Chapter 273). See *id.* § 830.10 (West 1985) (requiring the identification badge clearly bear on its face the identification number or name of the officer).

Criminal Procedure; bail--controlled substances

Penal Code § 1275 (amended).

AB 574 (Harvey); 1990 STAT. Ch. 117

Support: California Peace Officers' Association, California Police Chiefs' Association, California State Sheriffs' Association, California District Attorneys' Association`

Opposition: California Department of Finance, Chief Probation Officers of California, California Attorneys for Criminal Justice, American Civil Liberties Union

Under existing law, the court may release a defendant on bail if the defendant posts a bond.¹ Bail must be denied, however, if the judge or magistrate is convinced that the consideration² given for the bail bond was feloniously obtained.³

Chapter 117 provides that when a person has been arrested for designated controlled substance⁴ offenses⁵ and a peace officer⁶ has reasonable cause⁷ to believe that the consideration for the bail bond was feloniously obtained, the officer is required to file a

1. See CAL. PENAL CODE §§ 1268-1304 (West 1982 & Supp. 1990) (explanation of bail procedures and requirements). See also CAL. INS. CODE § 1800.4 (West 1972) (definition of bail bond).

2. See CAL. PENAL CODE § 1275 (amended by Chapter 117) (consideration includes a security, deposit, or indemnification paid, given, made or promised).

3. *Id.*

4. See CAL. HEALTH & SAFETY CODE § 11007 (West Supp. 1990) (definition of controlled substance).

5. See *id.* §§ 11351.5 (West Supp. 1990) (possession of cocaine base for sale); 11352 (transportation of a controlled substance from one county to another); 11378 (possession for sale of controlled substances classified in schedules III, IV, or V of California Health and Safety Code sections 11054-11058 including heroin, cocaine, amphetamines and methamphetamines); 11378.5, 11379, 11379.5 (possession for sale or transportation of phencyclidine or any analog of phencyclidine); 11379.6 (manufacturing, production or preparation by chemical extraction or synthesis of any controlled substance designated in sections 11054-11058).

6. See CAL. PENAL CODE §§ 830-830.6 (West Supp. 1990) (peace officers include sheriffs, deputies, police, marshals, constables, inspectors and investigators of district attorneys, members of the California Highway Patrol and the California National Guard).

7. See *People v. Marquez*, 237 Cal. App. 2d 627, 633, 47 Cal. Rptr. 166, 170 (1965) *rev'd on other grounds*; *People v. Ramirez*, 34 Cal. 3d 541, 547, 668 P.2d 761, 767, 194 Cal. Rptr. 454, 461 (1983) (there is no exact formula for the determination of reasonable cause, and each case must be determined on its own facts and circumstances).

request for an order denying bail with a magistrate.⁸ If the defendant or the defendant's attorney, friend, or family member makes an application to the magistrate for release on bail, the magistrate may deny release pending a hearing⁹ on the consideration given for the bail bond.¹⁰ If no order granting or denying bail is made within eight hours after booking, the defendant is entitled to be released upon posting the bail specified in the applicable bail schedule.¹¹ Chapter 117 also allows the magistrate to increase the amount of bail if the defendant has willfully misled the court regarding the source of the bail.¹²

LSP & EDS

8. CAL. PENAL CODE § 1275 (amended by Chapter 117). Chapter 117 only applies if the arrestee is, at the time of the arrest, on probation for violation of one of the designated controlled substances offenses, or if the offense involves a sentencing enhancement based on a large volume amount of a controlled substance. *Id.* In requesting the order denying bail, the officer must make a declaration under penalty of perjury stating the facts and circumstances supporting the officer's belief. *Id.* See CAL. HEALTH & SAFETY CODE §§ 11370.4, 11379.8 (West Supp. 1990) (providing for sentencing enhancements for large volume amounts of controlled substances). See CAL. PENAL CODE § 1275 (amended by Chapter 117) (a commissioner of the magistrate is also qualified to accept the request).

9. See CAL. PENAL CODE § 825 (West Supp. 1990) (procedure for magistrate hearing following an arrest).

10. *Id.* § 1275 (amended by Chapter 117).

11. *Id.* See *id.* § 1269(b) (West Supp. 1990) (explanation of bail schedules for particular offenses).

12. *Id.* § 1275 (amended by Chapter 117). Misrepresentation of the source of bail is also a factor to be considered in any subsequent bail hearing. *Id.*

Criminal Procedure; court-appointed counsel, changes of venue

Penal Code § 987.2, 1017, 1018, 1035, 4852.2 (amended).
AB 125 (Floyd); 1990 STAT. Ch. 608

Existing law requires a court to appoint and compensate counsel in a criminal proceeding for any person who desires but is unable to afford counsel.¹ Under Chapter 608, an indigent defendant who has already established an attorney-client relationship² in one county may be appointed the same attorney for a second or subsequent charge in another county, if specified conditions are met.³

Existing law requires a municipal court in a criminal proceeding to order a change of venue to another judicial district in the same county under certain circumstances.⁴ If the defendant agrees to plead guilty or nolo contendere to pending felony charges, Chapter 608 provides for a change of venue from the county where the defendant is charged to the county where the defendant is held, subject to the approval of the district attorney of both counties.⁵

Under existing law, any person compensated for procuring a pardon or commutation of a sentence who fails to inform the governor of the type and amount of compensation received is guilty of a misdemeanor.⁶ Chapter 608 exempts persons who are licensed

1. Cal. Penal Code § 987.2(a) (amended by Chapter 608). *See id.* § 987 (West 1985) (providing for appointment of counsel for indigent defendants).

2. *See id.* § 987.2(e) (amended by Chapter 608) (attorney-client relationship may be with a public defender, defense services contract attorney, or private attorney).

3. *Id.* § 987.2(e) (amended by Chapter 608). *See id.* § 987.2(e)(1)-(3) (amended by Chapter 608). The conditions for appointment require that the charges would be joinable for trial if held in the same county, that appointment would best serve the interests of justice and economy, and that the appointed counsel consents to the appointment. *Id.*

4. *Id.* 1035(a) (amended by Chapter 608). The court must order a change of venue on motion of the prosecution if the change will be convenient for all parties concerned and if the defense consents in writing. *Id.*

5. *Id.* § 1035(b) (amended by Chapter 608) (proceedings in the new venue are limited to pleas and sentencing).

6. *Id.* § 4852.2 (amended by Chapter 608).

to practice law in California, and who are acting as attorneys for the convict from these provisions.⁷

SAJ

Criminal Procedure; denial of probation or suspended sentence

Penal Code § 1203.09 (amended).

AB 2084 (Murray); 1990 STAT. Ch 68

Under existing law, a person convicted of specified crimes¹ is ineligible for probation or a suspended sentence if the victim is sixty years of age or older, blind, paraplegic, or quadriplegic.²

7. *Id.*

1. See CAL. PENAL CODE § 1203.09(b) (amended by Chapter 68) (specified crimes include murder, robbery, kidnapping, first degree burglary, forcible rape, and assault with the intent to commit rape or sodomy).

2. *Id.* § 1203.09(a) (amended by Chapter 68). The provision applies if the defendant knew, or reasonably should have known of the victim's disability or age. *Id.*

Under Chapter 68, a person convicted of one these crimes is also ineligible for probation or a suspended sentence if the victim is confined to a wheelchair.³

DAG

Criminal Procedure; electronic pleadings

Penal Code § 959.1 (amended).
AB 3168 (Frazee); 1990 STAT. Ch. 289

Under existing law, an accusatory pleading¹ to initiate a criminal prosecution may be filed with a magistrate or an authorized court in electronic form if the pleading is issued in the name of a public prosecutor.² Chapter 289 allows accusatory pleadings to be issued in the name of a court clerk if the complaint

3. *Id.* Several other jurisdictions have enacted statutes increasing sentences or denying parole, probation, or a suspended sentence for particular crimes if the victim is elderly or handicapped. *See, e.g.,* COLO. REV. STAT. §§ 16-11-309(b) (Supp. 1989) (mandatory prison term for offenses involving a deadly weapon when the victim is elderly or handicapped); 18-3-209(4) (1986) (revocation of probation for a defendant convicted of assault on a handicapped or elderly person if the victim has suffered a financial loss and restitution is not made within a reasonable period of time); CONN. GEN. STAT. ANN. § 53a-59a (West 1985) (no suspended or reduced sentence upon conviction of assault on a victim age 60 or older). These statutes have generally withstood constitutional attack. *See People v. Peace*, 107 Cal. App. 3d 996, 1004, 166 Cal.Rptr. 202, 207 (1980) (statute making the defendant ineligible for probation because the victim was elderly does not deny equal protection of the law); *Fields v. United States*, 547 A.2d 138, 140 (D.C. 1988) (statute providing for a sentence enhancement if the victim is elderly does not violate due process of law). *But see State v. Goode*, 380 So. 2d 1361, 1364 (La. 1980) (a five year sentence enhancement if the victim is elderly constitutes excessive punishment and violates the Louisiana constitution).

1. Accusatory pleadings include complaints, informations, indictments, and approved citations or notices to appear. CAL. PENAL CODE § 959.1(b) (amended by Chapter 289).

2. *Id.* § 959.1(a), (c)(1) (amended by Chapter 289). The magistrate or court must be equipped to electronically store the pleading and be able to reproduce it in physical form on demand. *Id.* § 959.1(c)(3) (amended by Chapter 289). Even though an electronically filed pleading does not require subscription by a natural person, the pleading must still be sworn to before an officer authorized to administer oaths. *Id.*

is issued for failure to appear, failure to pay a fine, or failure to comply with a court order.³

MJF

Criminal Procedure; escaped felons

Penal Code § 4537 (amended).

SB 2077 (Ayala); 1990 STAT. Ch. 819

Support: Office of the Attorney General

Opposition: California Probation, Parole, and Correctional Association, California Attorneys for Criminal Justice

Existing law requires the head of any secure detention facility¹ to notify the local sheriff or chief of police of an escape by a person confined in that facility.² Chapter 819 requires the director of a detention facility under the jurisdiction of the Department of Corrections to give newspapers and television stations prompt notification of an escape if the escapee was convicted of specified

3. *Id.* § 959.1(c)(1) (amended by Chapter 289).

1. See CAL. PENAL CODE § 4537(a) (amended by Chapter 819) ("secure detention facilities" include prisons, juvenile halls, county jails, and any institution of the California Youth Authority).

2. *Id.* § 4537(a) (amended by Chapter 819). The head of the facility may also notify other persons of the escape if necessary for public safety or to aid in the capture of the escapee. *Id.* § 4537(b) (amended by Chapter 819). See CAL. WELF. & INST. CODE §§ 1764(i) (West Supp. 1990) (a physical description of an escapee of the Youth Authority, aged 16 or older, must be released to a member of the public upon request); 7325.5 (West 1984) (the director of a mental health facility must release information about an escaped mental patient, including a physical description, if the escapee was found not guilty by reason of insanity, not competent to stand trial, or is a mentally disordered sex offender); CAL. PENAL CODE §§ 4536(b) (West 1982) (the director of a mental health institution must notify the head of the local law enforcement agency, the court, the prosecuting attorney, and the Department of Justice of the escape of a mentally disordered sex offender); 11155(b) (West Supp. 1990) (the Department of Corrections must notify a crime victim or the victim's next of kin of the escape of the person convicted of the crime).

felonies,³ or if the escapee escaped through the use of force or violence.⁴

DAG

Criminal Procedure: minor victims--closed testimony

Penal Code § 859.1 (new).

AB 1325 (Waters); 1990 STAT. Ch. 1276

In criminal proceedings,¹ existing law provides a defendant the right to a public trial.² However, existing law allows the court to exclude public access to a criminal proceeding upon request of the defendant, where failure to exclude public access would deny the defendant a fair and impartial trial.³ Existing law also permits the

3. Specified felonies, pursuant to California Penal Code section 667.5, include murder, voluntary manslaughter, mayhem, rape, sodomy, oral copulation, lewd acts on a child under age 14, felonies punishable by death or life imprisonment, felonies in which the defendant inflicts great bodily injury, arson, and robbery committed in a house or trailer. CAL. PENAL CODE § 4537(c) (amended by Chapter 819).

4. *Id.* The director must notify newspapers of general circulation and television stations that broadcast news programs within the county of escape. The notification must include a photograph and description of the escapee. *Id.* Compare *Cansler v. State*, 234 Kan. 554, 675 P.2d 57, 66 (1984) (the state has a duty to notify area residents and neighboring police forces of the escape of violent prisoners) with *Morgan v. County of Yuba*, 230 Cal. App. 2d 938, 944-45, 41 Cal. Rptr. 508, 512 (1964) (authorities are under a duty to notify the victim of the release of a dangerous prisoner when they promise the victim that they will do so). *But cf.* *Wittkowski v. State*, 103 N.M. 526, 710 P.2d 93, 97-98 (Ct. App. 1985) (in a case where escaped prisoners killed a person in a neighboring state, the state police were not obligated to notify the neighbor state of the escape, even though the state police knew the escapees were violent). See generally Annotation, *Liability of Public Officer or Body for Harm Done by Prisoner Permitted to Escape*, 44 A.L.R. 3d 899 (1972); *Cansler*, 675 P.2d at 63-66 (review of cases concerning the duties and liabilities of public entities in the event of an escape). Cf. GA. CODE ANN. § 42-5-8 (1982) (in addition to notifying the law enforcement authorities of an escape, a correctional institution must notify all parties who have a legitimate need to know of that person's escape and who have made a written request to be notified of that person's release).

1. See CAL. WELF. & INST. § 203 (West 1984) (a juvenile court proceeding is not considered a criminal proceeding).

2. CAL. PENAL CODE § 686(1) (West 1985).

3. *Id.* § 868 (West Supp. 1990).

court, upon motion by the prosecutor, to exclude the public from the courtroom during the testimony of a minor victim of a sex offense where public access may harm the minor.⁴ With the enactment of Chapter 1276, upon motion by the prosecutor, the court in a criminal proceeding involving a defendant charged with a specified sex crime⁵ upon a minor victim under the age of sixteen must conduct a hearing.⁶ In the hearing, the court must consider specified factors⁷ to determine whether the courtroom should be closed to the public during the minor victim's testimony in order to protect the minor's reputation.⁸

VCM

4. *Id.* § 868.7(a)(1) (West Supp. 1990).

5. *Id.* § 859.1(a) (enacted by Chapter 1276). The designated sex offenses, specified by the California Penal Code section 868.8, are: (1) Sexual battery; (2) rape; (3) willful cruelty or unjustifiable punishment of a child; (4) corporal punishment of a child; (5) incest; (6) sodomy; (7) lewd or lascivious acts with a child under 14; (8) oral copulation; (9) continuous sexual abuse of a child; (10) penetration of genital or anal opening by a foreign object; (11) indecent exposure; and (12) misdemeanor child molestation. *Id.*

6. *Id.*

7. *See id.* § 859.1(b) (enacted by Chapter 1276). The specified factors to be weighed by the court during the hearing include: (1) The nature and gravity of the offense; (2) the minor's age; (3) the extent to which community size precludes anonymity of the minor victim; (4) the likelihood of the public disgrace over the minor victim's status; (5) the presence of an overriding public interest in an open hearing; (6) the substantial probability proven by the prosecution that the witness's identity would be publicly disclosed and that the disclosure would seriously harm the minor; (7) the minor witness's own disclosure to the public; and (8) any additional factors the court determines must be considered to preserve justice. *Id.*

8. *Id.* § 859.1(a) (enacted by Chapter 1276). The First Amendment implicitly guarantees the right to attend criminal trials. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). However, a criminal trial will be closed to the public where there is a compelling state interest. *Id.* at 581. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 610-611 (1982) (any statute authorizing mandatory court closure during a minor victim's testimony is unconstitutional). Protection of a minor victim of a sex crime from further trauma presents a compelling state interest. *Id.* at 607. *See generally* Comment, *Globe Newspaper Co. v. Superior Court*, 11 HOFSTRA L. REV. 1353, 1371-78 (1983) (recommending as alternatives to court closure, limiting the number of spectators, using videotaped depositions, and utilizing special courtrooms). The author of this comment calls for the same considerations to be made for minor victims as are currently made for minor defendants. *Id.* at 1380.

Criminal Procedure; parole eligibility

Penal Code §§ 3043.1, 3043.2, 3043.3 (new); Penal Code § 3043 (amended).

AB 2803 (Hauser); 1990 STAT. Ch. 278

Support: California Attorney General's Office, California Probation, Parole and Corrections Association, California Youth and Adult Corrections Agency, Peace Officers' Research Association of California.

Opposition: California Attorneys for Criminal Justice.

Under existing law, any victim of a crime or the victim's next of kin has the right to request notice of any parole hearing of the prisoner responsible for the crime.¹ The victim, the next of kin, or their legal counsel has the right to appear at the hearing to express concerns regarding the offender.² Existing law requires the parole board to consider these statements in making its decision whether to release a prisoner.³

Chapter 278 expands existing law by allowing up to two members of the victim's immediate family⁴ the opportunity to appear personally, or by representation of legal counsel, and make a statement regarding the prisoner.⁵ Chapter 278 also allows the prosecutor to represent the victim, next of kin, or immediate family member at the parole eligibility hearing.⁶ Additionally, Chapter 278 gives the Board of Prison Terms the discretion to allow more

1. CAL. PENAL CODE § 3043 (amended by Chapter 278). Notice must be sent at least 30 days in advance of any hearing to consider parole suitability or to set a parole date. CAL. PENAL CODE § 3043 (amended by Chapter 278). *See id.* §§ 679.02(a)(5) (West Supp. 1990) (right of victim or next of kin to be notified of parole eligibility hearing upon request); 679.03 (duty of presiding judge to designate the appropriate county department to notify the victim, next of kin, or witness of the right to request notification of release of a prisoner convicted of a violent crime).

2. *Id.* § 3043 (amended by Chapter 278).

3. *Id.*

4. *See id.* § 3043.3 (enacted by Chapter 278) (immediate family includes spouse, children, parents, siblings, grandchildren, and grandparents).

5. *Id.*

6. *Id.* § 3043.2(c) (enacted by Chapter 278).

than two members of the victim's immediate family to attend a parole eligibility hearing.⁷

Chapter 278 allows a victim⁸ appearing at a parole eligibility hearing to bring one person of their choice for support.⁹ The support person is not allowed to speak at the hearing.¹⁰ Chapter 278 also provides that a victim, next of kin, or immediate family member may file with the board a written, audiotaped, or videotaped statement regarding the prisoner in place of a personal appearance.¹¹

MJF

7. *Id.* § 3043 (amended by Chapter 278). The board may limit attendance in an order of preference as follows: spouse, children, parents, siblings, grandchildren, grandparents. *Id.*

8. *See id.* § 3043.1 (enacted by Chapter 278) (or the victim's next of kin or immediate family member).

9. *Id.*

10. *Id.*

11. *Id.* § 3043.2(a) (enacted by Chapter 278). If an audiotape or videotape is submitted, a written transcript of the statement must be included. *Id.* § 3043.2(b) (enacted by Chapter 278). *Cf. In re Thomas Braun*, CDC No. B-18129, 41-43, (Oct. 24, 1989) (unpublished transcript) (copy on file at *Pacific Law Journal*) (disabled victim of rape and attempted murder who was unable to attend parole hearing submitted videotaped statement, but parole board refused to view videotape).

Criminal Procedure; prisoners--medical transfers

Penal Code § 4007 (amended).

AB 2952 (Sher); 1990 STAT. Ch. 1353

Under existing law, when a county prisoner needs medical treatment requiring hospitalization, and treatment cannot be provided by a county hospital due to a lack of adequate detention facilities, the court may order a transfer to a state prison¹ or correctional facility.² Chapter 1353 provides that when a transfer is necessary, a hearing must be held to determine whether or not the order should be continued or rescinded.³ However, if the prison physician determines that a medical emergency exists, the transfer may be made immediately.⁴

LSP

1. See CAL. PENAL CODE § 6082 (West Supp. 1990) (definition of a state prison).

2. *Id.* § 4007 (amended by Chapter 1353). See *id.* §§ 6101, 6102 (West 1982 & Supp. 1990) (purpose and location of the California correctional facility).

3. *Id.* § 4007 (amended by Chapter 1353). The prisoner has the right to appear at the hearing and be represented by counsel. *Id.* The prisoner may waive the right to a hearing, in which case the sheriff must notify the prisoner's attorney of the transfer within 48 hours, or by the next business day, whichever is later. *Id.*

4. *Id.*

Criminal Procedure; property crimes--jurisdiction of offenses

Penal Code § 786 (amended).

AB 2551 (Quackenbush); 1990 STAT. Ch. 156

Support: California Police Officers Association; California Police Chiefs Association; California State Sheriffs Association

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association; American Civil Liberties Union

Under existing law, for the offenses of burglary, robbery, theft, and embezzlement, jurisdiction exists in the territories where the property was stolen, or received with the knowledge that it was stolen.¹ Chapter 156 expands jurisdiction over these offenses to any contiguous jurisdictional territory where the defendant was arrested for committing a property crime.² However, the expanded jurisdiction exists only if the defendant waives the right of vicinage.³

JPA

1. CAL. PENAL CODE § 786 (amended by Chapter 156).

2. *Id.*

3. *Id.* See U.S. CONST. amend. VI, § 1 and *People v. Richardson*, 138 Cal. App. 404, 409, 32 P.2d 433, 435 (1934) The right of vicinage entitles a criminal defendant to be tried by a jury drawn from the area in which the crime occurred. *Id.* See generally *Hernandez v. Mun. Court*, 49 Cal. 3d 713, 781 P.2d 547, 263 Cal. Rptr. 513 (1989) (boundaries of the county define the vicinage); *People v. Remington*, 217 Cal. App. 3d 423, 266 Cal. Rptr. 183 (1990). The failure to raise a vicinage objection in superior court precludes raising the point on appeal. *Id.* See CAL. PENAL CODE § 786 (amended by Chapter 156). The prosecution must secure the defendant's knowing, voluntary, and intelligent waiver of the right of vicinage. *Id.* See *Patterson v. Illinois*, 487 U.S. 285 (1988). In Sixth Amendment cases, the constitutional minimum for determining whether a waiver was "knowing and intelligent" is that the accused be made sufficiently aware of his or her right to have counsel present and the danger of proceeding without counsel. *Id.* at 299-300.

Criminal Procedure; property damage-- aggregation

Penal Code § 12022.6 (amended, repealed and new).
AB 3087 (Hayden); 1990 STAT. Ch. 1571

Existing law provides for sentence enhancements where the defendant takes or damages property valued in excess of specified amounts¹ during the commission of a felony.² Chapter 1571 allows aggregation of value for losses resulting from felonies alleged under multiple charges of taking, damaging, or destroying property.³

JCM

Criminal Procedure; restitution

Government Code § 13967.2 (new); § 13967 (amended); Penal Code §§ 1202.4, 1203.04, 1203.055, 1203.1g, 1203.1j (amended).
AB 1893 (Areias); 1990 STAT. Ch. 45

Under existing law, the court must require any person convicted of a crime¹ to pay a restitution fine.² If the defendant is denied

1. See CAL. PENAL CODE § 12022.6(a)-(b) (amended by Chapter 1571). (additional one-year term for property loss over \$25,000; additional two-year term for property loss over \$100,000).

2. *Id.* § 12022.6 (amended by Chapter 1571). See *id.* § 1170.1 (West Supp. 1990) (limitations on aggregation).

3. *Id.* § 12022.6(b) (amended by Chapter 1571). Case law had interpreted this code section as prohibiting the aggregation of the value of all property taken or damaged in the course of multiple felonies. *People v. Bowman*, 210 Cal. App. 3d 443, 447, 258 Cal. Rptr. 358, 360 (1989) (limiting aggregation to a single felony count despite recognition of probable legislative intent that multiple counts should be entitled to aggregation to further deter large scale crime). See *People v. Ramirez*, 109 Cal. App. 3d 529, 539, 167 Cal. Rptr. 174, 179 (1980) (court perceives legislative intent to deter large scale crime).

1. See CAL. PENAL CODE § 15 (West 1988) (definition of crime).

probation,³ and the victim⁴ has suffered economic loss⁵ as a result of the defendant's criminal conduct, the court must order the defendant to pay restitution⁶ to the victim in the place of the restitution fine.⁷ However, if the defendant is granted probation, the court may order a stay of restitution until probation is successfully completed, at which time the stay becomes permanent.⁸

Chapter 45 specifies that the court may not order a stay of restitution when probation is granted on a felony conviction.⁹ Additionally, the court must order full restitution, unless compelling and extraordinary reasons exist.¹⁰

Chapter 45 requires the court to enter a separate order to allow deduction from the defendant's income for payment on an order for

2. CAL. GOV'T CODE § 13967(a) (amended by Chapter 45). See CAL. PENAL CODE § 1464(a) (West Supp. 1990) (imposition of restitution fine).

3. See CAL. PENAL CODE § 1203(a) (definition of probation).

4. See *id.* § 1203.04(a) (victim includes the immediate surviving family in homicide cases). See also *People v. Calhoun*, 145 Cal. App. 3d 568, 572, 193 Cal. Rptr. 394, 396 (1983) (victim includes insurer that paid loss caused by defendant's crime); *People v. Clark*, 130 Cal. App. 3d 371, 384, 181 Cal. Rptr. 682, 691 (1982) (victims include the surviving children of a manslaughter victim).

5. See *People v. Rivera*, 212 Cal. App. 3d 1153, 1162, 261 Cal. Rptr. 93, 98-99 (1989) (defendant convicted of receiving stolen property did not cause victim's actual loss from burglary absent proof that the defendant also committed the burglary).

6. See CAL. PENAL CODE § 1203.04(d) (amended by Chapter 45) (restitution includes the value of stolen or damaged property, medical expenses, and lost wages). See also *People v. Hodgkin*, 194 Cal. App. 3d 795, 805, 239 Cal. Rptr. 831, 836 (1987) (holding that restitution may include full payment of both medical costs and lost wages).

7. CAL. GOV'T CODE § 13967(c) (amended by Chapter 45). A restitution order under this provision is enforceable as a civil judgment. *Id.* If the defendant is convicted of a felony, the court must order restitution to be paid to the victim in addition to any other penalty or fine. *Id.* § 13967(a) (amended by Chapter 45). The fine must be between \$100 and \$10,000, set by the court upon considering the seriousness of the offense, financial gain by the defendant, extent of the loss to the victim, and any other relevant circumstances. *Id.* See CAL. CONST. art 1, § 28(b) (restitution constitutionally required in every criminal case in which a victim suffers a loss, unless the court finds that compelling and extraordinary reasons exist).

8. CAL. PENAL CODE § 1202.4(b) (amended by Chapter 45).

9. *Id.* § 1202.4(c) (amended by Chapter 45). See *id.* §§ 1203.1g (amended by Chapter 45) (restitution for the costs of medical and psychological treatment is mandatory for sexual assault on minor); 1203.1j (amended by Chapter 45) (restitution of costs for medical and psychological treatment is mandatory for assault on an elderly person).

10. CAL. PENAL CODE § 1203.04(a)-(b) (amended by Chapter 45).

restitution.¹¹ The order for income deduction must be stayed until the agency responsible for collection of restitution¹² determines that the defendant has failed to pay the obligation without good cause.¹³ Upon receiving information that the defendant has not paid the restitution obligation, the agency must request that the defendant provide evidence of restitution payments or show good cause¹⁴ for failing to pay.¹⁵ If the defendant fails to provide the information within five days, the agency must inform the court clerk to serve the income deduction order.¹⁶

MJF

11. CAL. GOV'T CODE § 13967.2(a) (enacted by Chapter 45). Prior to the enactment of Chapter 45, the victim was responsible for attempting to collect any funds due. *See id.* § 12431 (West Supp. 1990) (requiring victim to certify in writing that an attempt was made to recover restitution from the defendant before the state controller will pay out funds from the state restitution fund); CAL. PENAL CODE § 679.02(8) (West Supp. 1990) (right of victim to civil recovery from state restitution fund).

12. *See* CAL. PENAL CODE § 1203.1b (West Supp. 1990) (court determines the manner in which the defendant will pay restitution and whether payments will be made to the victim, the state restitution fund, or to a local agency).

13. CAL. GOV'T CODE § 13967.2(b)(1) (enacted by Chapter 45).

14. *See id.* § 13967.2(g)(1)-(3) (enacted by Chapter 45) "Good cause" means that defendant's economic situation has substantially changed due to involuntary unemployment, involuntary cost-of-living increases, medical or natural disaster, an administrative error regarding defendant's obligation, or similar justification. *Id.*

15. *See id.* § 13967.2(b)(2) (enacted by Chapter 45).

16. *Id.* The defendant has a 15-day appeal period. *Id.* The income deduction order will require defendant's employer to deduct the amount required by the court from any income due to the defendant. *Id.* § 13967.2(c) (enacted by Chapter 45). If the employer fails to deduct the specified amount from the defendant's income, the employer will be liable for the amount that should have been deducted plus costs, interest, and attorney's fees. *Id.* § 13967.2(f)(4)(D) (enacted by Chapter 45).

Criminal Procedure; sentencing--aggravating circumstances

Penal Code § 1170.84 (new).

AB 2554 (Quackenbush); 1990 STAT. Ch. 1216

Under existing law, when a court determines the term of imprisonment and the applicable statute specifies a choice between a lower, middle and upper term, the court must impose the middle term unless circumstances exist that would either aggravate¹ or mitigate² the crime.³ Chapter 1216 requires the court to consider the tying, binding, or confining of any victim during the course of a serious felony⁴ an aggravating circumstance when determining the prison term.⁵

MJF

1. Aggravating circumstances include: (1) Crimes involving great violence, great bodily harm or threat of great bodily harm; (2) the defendant's use of a weapon at the time of the commission of the crime; (3) the vulnerability of the victim; (4) crimes involving multiple victims; (5) the defendant's occupying a position of leadership or dominance of other participants in the commission of the crime; (6) the defendant's threatening of witnesses or illegal interference with the judicial process; (7) the defendant's criminal professionalism indicating premeditation; (8) the defendant's violent conduct indicating a serious danger to society; and (9) the prior convictions of the defendant. CAL. R. CT. 421 (West Supp. 1990).

2. Mitigating circumstances include: (1) The passiveness of defendant's role in the crime; (2) the victim's initiation of the incident; (3) the defendant's participation was partially excusable for some reason not amounting to a defense; (4) the defendant was induced by others to participate in the crime; (5) the defendant exercised caution to avoid harm or damage; (6) the defendant mistakenly believed his conduct was legal; (7) the defendant was attempting to provide necessities for his family or himself; (8) the defendant has no prior criminal record; (9) the defendant voluntarily acknowledged wrongdoing early in the criminal process; and (10) the defendant has made restitution. *Id.* 423.

3. CAL. PENAL CODE § 1170(b) (West 1988).

4. Serious felonies include: murder, voluntary manslaughter, mayhem, rape, sodomy by force or threat of force, oral copulation by force or threat of force, lewd or lascivious acts on a child under the age of 14 years, any felony punishable by death or life in prison, burglary of an inhabited dwelling, robbery, and any felony in which the defendant personally used a dangerous or deadly weapon. CAL. PENAL CODE § 1192.7(c) (West Supp. 1990).

5. *Id.* § 1170.84 (enacted by Chapter 1216).

Criminal Procedure; sentencing enhancements

Penal Code § 1170.1 (amended).

AB 2655 (Hunter); 1990 STAT. Ch. 835

Source: Santa Clara District Attorney's Office.

Opposition: California Attorneys for Criminal Justice

Under existing law, the double-the-base term¹ limitation provides that sentences that run consecutively may not exceed twice the length of the term imposed as a base term.² This limitation does not apply to persons convicted of one or more felonies committed while in state prison.³ Under Chapter 835, the sentence of any person who has served a prior prison term is also exempt from the double-the-base term limitation.⁴

LSP & EDS

1. See CAL. R. CT. 405 (West 1990) (the base term is the determinate prison term selected from among the three possible terms prescribed by a statute, or the determinate term prescribed by law if a range of three possible terms is not provided). See also CAL. PENAL CODE § 1170(b) (West Supp. 1990) (when the statute specifies three possible terms, the court must impose the middle term, unless there are aggravating or mitigating circumstances).

2. CAL. PENAL CODE § 1170.1(g) (amended by Chapter 835).

3. *Id.* § 1170.1(g) (amended by Chapter 835). Other sentences not limited by the double-the-base term limitation are those imposed upon a conviction for kidnap for sexual purposes, use of a deadly or dangerous weapon or firearm, and theft or damage of property in excess of \$25,000. See *id.* §§ 667.5, (West Supp. 1990) 667.8(a)-(b), (West 1988) 12022, (West Supp. 1990) 12022.6(a), 12022.8, 12022.9 (definitions of felonies not subject to the base term limitation).

4. *Id.* § 1170.1(g) (amended by Chapter 835). See generally *People v. Prather*, 50 Cal. 3d 428, 435-439, 787 P.2d 1016, 1017-1018, 267 Cal. Rptr. 605, 609-611 (1990) (holding that article I, section 28, of the California Constitution does not restrict sentencing enhancements based on prior felony convictions, and that the double-the-base term limitation does not apply to a defendant who has served a prior prison term); *People v. O'Bryan*, 37 Cal. 3d 841, 845, 694 P.2d 135, 138, 210 Cal. Rptr. 450, 452-453 (1985) (ruling that sentence enhancements under section California Penal Code section 1170.1 need not be limited to avoid a sentence of more than twice the base term).

Criminal Procedure; sentencing enhancements for violent felonies

Penal Code § 667.5 (amended).

AB 662 (Murray); 1990 STAT. Ch. 18

Existing law prescribes sentencing enhancements for subsequent violent felony offenses¹ when the defendant has served one or more prior prison terms for violent felony convictions.² Chapter 18 adds to the class of violent felonies the crime of exploding, or having the intent to explode, any destructive device with the intent to commit murder.³

LSP & EDS

1. See CAL. PENAL CODE § 667.5(c) (amended by Chapter 18) (violent felonies include murder or voluntary manslaughter, attempted murder, mayhem, arson, rape, sodomy, felonies involving the use of a firearm or where bodily injury results, and felonies punishable by life imprisonment or death).

2. *Id.* § 667.5(a) (amended by Chapter 18). The additional enhancements consist of three-year terms for each prior prison term. *Id.* Prior terms include those served for convictions in other jurisdictions which would result in a state prison sentence if committed in California. *Id.* § 667.5(f) (amended by Chapter 18). See *id.* § 667.5(h) (amended by Chapter 18) (definition of prior prison term).

3. *Id.* § 667.5(c)(13) (amended by Chapter 18). See *id.* § 12308 (West 1982) (exploding a destructive device with the intent to commit murder is punishable by a state prison term of five, seven or nine years and a fine of up to \$10,000).

Criminal Procedure; sex offenses--consent

Penal Code § 261.6, 1127d (amended).

AB 2631 (Roybal-Allard); 1990 STAT. Ch. 271

Support: Attorney General's Office; California Peace Officers' Association; California State Sheriff's Association; California State Coalition of Rape Crisis Centers; California State Student's Association; Commission on the Status of Women; University of California Student Association; California NOW.

AB 2629 (Roybal-Allard); 1990 STAT. Ch. 269

Support: Attorney General's Office; California State Coalition of Rape Crisis Centers; California State Student's Association; Commission on the Status of Women; University of California Student Association.

Existing law defines "consent" within the context of rape cases¹ as positive cooperation in the act, or an attitude pursuant to an act of free will.² Existing case law also provides that a reasonable good faith belief that the victim consented may negate general criminal intent and, therefore, serve as a viable defense to a rape charge.³ Finally, existing law prohibits instructing a jury that they may infer that prior consent to sexual intercourse increases the probability of consent in subsequent sexual relations.⁴ Chapter 271 specifies that a current or prior dating relationship⁵ is

1. See CAL. PENAL CODE § 261 (West 1988). See also *id* §§ 286, 288a, 289 (West Supp. 1990) (definition of rape and related sex crimes).

2. *Id.* § 261.6 (amended by Chapter 271) (definition of consent). Cf. CALJIC § 1.23 (5th ed. West 1988) (similar definition of consent).

3. *People v. Mayberry*, 15 Cal. 3d 143, 153-58, 542 P.2d 1337, 1344-47, 125 Cal. Rptr. 745, 752-55 (1975). See CALJIC § 10.65 (5th ed. West 1988) (regarding defendant's belief as to victim's consent in forcible rape cases).

4. CAL. PENAL CODE § 1127d (amended by Chapter 269) (limitation on use of prior consent).

5. *Id.* § 243(f)(11) (West Supp. 1990) (definition of dating relationship as frequent intimate associations, primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations). Cf. *People v. Jackson*, 167 Cal. App. 3d 829, 832 213 Cal. Rptr. 521, 523 (1985) (defining a dating relationship as not merely casual social contacts, but a sustained relationship over a period of months such that the parties are normally perceived as, if not in fact, sharing a strong emotional or romantic bond).

not necessarily sufficient to constitute consent, but that this limitation does not affect the admissibility of evidence⁶ or the burden of proof on the issue of consent.⁷

Chapter 269, however, specifies that the jury may consider evidence of prior sexual intercourse with the defendant to which the victim consented, but only as it relates to the question of the victim's consent to the act of intercourse charged, or to the defendant's good faith reasonable belief⁸ in the victim's consent.⁹

JCM

6. Evidence of consent remains admissible under California Evidence Code sections 1101(b) and 1103(b)(2). CAL. PENAL CODE § 261.6 (amended by Chapter 271). *See* CAL. EVID. CODE §§ 1101(b) (West Supp. 1990) (evidence may be admissible when relevant to prove some fact other than his or her disposition to commit the act); *id.* § 1103(b)(2) (opinion evidence, reputation evidence, or evidence of specific instances of the complaining witness' sexual conduct is not admissible except with regard to the defendant).

7. CAL. PENAL CODE § 261.6 (amended by Chapter 271). *See* *People v. Perez*, 194 Cal. App. 3d 525, 528-30, 239 Cal. Rptr. 569, 570-72 (1987) (holding that evidence of prior sexual relations between the victim and the defendant may be considered when determining whether the defendant had good faith reasonable belief in consent). *See also* CALJIC § 10.66 (jury instructions on consent). *See generally* *Estrich, Rape*, 95 YALE L.J. 1087, 1143 (1986) (observing that evidence of consent is always relevant even where rape shield laws might impair admissibility).

8. *See* *People v. Thomas*, 267 Cal. App. 2d 698, 708, 73 Cal. Rptr. 590, 596 (1968) (noting that the definition of "good faith reasonable belief" requires a two part analysis: whether the accused honestly believed, and whether a reasonable person would have formed the same belief).

9. CAL. PENAL CODE § 1127d (amended by Chapter 269).

Criminal Procedure; transcripts of court proceedings

Civil Procedure Code § 269 (amended).

AB 2865 (Burton); 1990 STAT. Ch. 636

Support: State Bar Committee on the Appellate Courts

Opposition: California Judges Association

Existing law requires a court reporter to prepare transcripts¹ of criminal proceedings within a reasonable time after trial.² Under existing law, a court reporter must prepare a record for appeal upon notification by the clerk of the court that an appeal has been filed.³ Chapter 636 requires a court reporter to prepare a record for appeal immediately after the defendant is convicted of a felony.⁴

DAG

1. See CAL. CIV. PROC. CODE § 274c (West 1982) (listing the required contents of a transcript).

2. *Id.* § 269 (amended by Chapter 636). In a capital case a transcript must be prepared and certified daily. CAL. PENAL CODE § 190.9(a) (West Supp. 1990). The certified transcript is prima facie evidence of the testimony and proceedings. CAL. CIV. PROC. CODE § 273 (West 1982).

3. CAL. R. CT. § 35(b) (West Supp. 1990). See CAL. PENAL CODE § 1247k (West 1982) (the Judicial Council has the authority to create rules pertaining to appeals in criminal cases).

4. CAL. CIV. PROC. CODE § 269(b) (amended by Chapter 636).

Criminal Procedure; vocational training and substance abuse programs

Penal Code § 4024.2 (amended).

AB 2555 (Quackenbush); 1990 STAT. Ch. 146

(Effective June 6, 1990)

Sponsor: Santa Clara County Department of Corrections

Support: California Public Defender's Association

Under existing law, the board of supervisors of a county may authorize the head of a county correctional facility¹ to offer prisoners of that facility the opportunity to participate in a work release program performing labor on levees and public facilities.² Each inmate who participates in this program earns a one day reduction in sentence for each day of satisfactory performance.³ Chapter 146 allows a county board of supervisors to authorize the head of a county correctional facility to offer inmates the opportunity to participate in either a work release program or educational, vocational training, or substance abuse programs in which one day of participation will account for one day of confinement.⁴

MJF

1. See CAL. PENAL CODE § 4024.2 (amended by Chapter 146) (a county sheriff may also be authorized). See also CAL. GOV'T CODE § 26605 (West 1988) (stating that the sheriff must take charge of the county jail and its prisoners); CAL. PENAL CODE § 4000 (West 1988) (The county jail of each county is kept by the sheriff of the county in which the jail is located. *Id.*

2. CAL. PENAL CODE § 4024.2(a)-(b)(1) (amended by Chapter 146).

3. *Id.* § 4024.2(a) (amended by Chapter 146).

4. *Id.* § 4024.2(b)(2) (amended by Chapter 146). However, credit for participation in an educational, vocational training, or substance abuse program may not exceed one-half of the hours set for the work release program, and the remaining one-half of the work program hours must be performed in manual labor. *Id.*